
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
:
Proposed general increase in electric rates, : **Docket No. 05-0597**
general restructuring of rates, price unbundling :
of bundled service rates, and revision of other :
terms and conditions of service :
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BRIEF ON EXCEPTIONS
OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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ORAL ARGUMENT REQUESTED

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Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO, by its attorneys GIORDANO & NEILAN, LTD., and hereby files its Brief on Exceptions in this proceeding pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”).

INTRODUCTION

The Building Owners and Managers Association of Chicago (“BOMA”) serves the interests of the commercial office building industry in Chicago. Members of BOMA own and/or manage more than 270 office buildings, comprising more than 168 million square feet of office space in the service territory of Commonwealth Edison Company (“ComEd”). BOMA intervened and has participated actively in this proceeding because all BOMA members are directly affected by this matter.

ComEd filed proposed tariffs on August 31, 2005 seeking approval of an increase in delivery service rates, a general restructuring of rates, price unbundling of rates for electricity supply and delivery, and revisions of other terms and conditions of ComEd's service. On June 8, 2006, the Administrative Law Judges issued a proposed order (the "Proposed Order") in this case. The Proposed Order is the subject of this Brief on Exceptions, which includes the specific language changes BOMA is requesting in the Commission's Final Order in this case.

BOMA appreciates the Administrative Law Judges' efforts to prevent the massive rate shock for over 10 megawatt ("MW") consumers which would have occurred under ComEd's proposed consolidation of its delivery service customer classes. (Proposed Order, pp. 195-196). Therefore, BOMA supports the Proposed Order's conclusion that ComEd must retain a customer class for over 10 MW customers and have a rate increase for this class in proportion to the overall revenue increase approved in this case. (Proposed Order, pg. 195).

BOMA also supports the Proposed Order's acceptance of BOMA's proposed language for ComEd's Rider Resale which was adopted by ComEd in its rebuttal testimony. (Proposed Order, pg. 239). Furthermore, BOMA supports the Proposed Order's conclusion that ComEd must provide an explanation of the basis for the weighting factors utilized in its cost of service study in ComEd's next delivery services rate case. (Proposed Order, pg. 166).

However, BOMA takes strong exception to the Proposed Order's rejection of BOMA's proposal to continue separate rate treatment for nonresidential consumers who use electricity for space heating ("nonresidential space heating consumers"). BOMA also

takes exception to the Proposed Order's rejection of BOMA's position that ComEd be required to follow the National Association of Regulatory Utility Commissioners ("NARUC") guidelines for allocation of customer-related and demand-related costs in ComEd's next delivery service rate case. Finally, BOMA opposes the Proposed Order's determination of ComEd's revenue requirement and continues to support the revenue requirement that Illinois Commerce Commission Staff ("Staff") has proposed in this proceeding.

EXCEPTION 1: The Proposed Order's Rejection of BOMA's Proposal To Continue Separate Rate Treatment For Nonresidential Space Heating Consumers is in Error Because it is Not Supported By the Record

In order to avoid a tremendous rate shock to nonresidential space heating consumers from ComEd's proposed elimination of its bundled rate option for these consumers (i.e., Rider 25) on January 1, 2007, BOMA proposed that ComEd continue its Rider 25 practice of exempting nonresidential space heating consumers from demand charges on electricity used for space heating in ComEd's delivery services tariffs. (BOMA Ex. 1.0, pg. 11, ll. 237-241, BOMA Ex. 2.0, pg. 11, ll. 239-242). The Proposed Order rejects BOMA's proposal on the grounds that continuation of separate rate treatment for nonresidential space heating consumers is not justified on the basis of cost and that the rate shock projected by BOMA for these consumers is not a sufficient justification to deviate from cost based rates. (Proposed Order, pg. 217).

The Proposed Order's bases for rejecting BOMA's proposal are not supported by the record in this proceeding. Therefore, the Proposed Order should be revised to accept BOMA's proposal for nonresidential space heating consumers.

BOMA witnesses T.J. Brookover and Kristav Childress showed that nonresidential space heating consumers currently are charged approximately 17% less under Rider 25 than they would be under ComEd's rates for bundled supply and delivery ("bundled rates"). (BOMA Ex. 1.0, pg. 8, ll. 164-174, pg. 10, ll. 207-213; BOMA Ex. 1.1; BOMA Ex. 1.2). This means that nonresidential space heating consumers would receive an overall rate increase for supply and delivery on January 1, 2007 that is approximately 17% higher than the very large overall increase that ComEd's other consumers will experience. Avoidance of rate shock of this magnitude in and of itself justifies acceptance of BOMA's proposal to continue Rider 25's exemption from demand charges for nonresidential space heating consumers on electricity used for space heating in ComEd's delivery service tariffs. Moreover, as BOMA cost of service expert witness Mr. David McClanahan testified, no cost of service analysis was ever presented in this proceeding that supports the Proposed Order's conclusion that continuation of separate rate treatment for nonresidential space heating consumers is not cost justified. (BOMA Ex. 4.0, pg. 2, ll. 47-55; Proposed Order, pg. 217).

The simple truth is that neither ComEd nor any other party in this proceeding presented any cost of service analysis that justifies the discontinuation of separate rate treatment for nonresidential space heating consumers. (BOMA Ex. 4.0, pg. 2, ll. 47-55). In fact, ComEd witness Mr. Paul Crumrine admitted that ComEd has not even analyzed the cost of providing delivery service to nonresidential space heating customers. (ComEd Ex. 23.0, pg. 35, ll. 739-740). Moreover, Mr. Crumrine testified under cross examination that ComEd has never even kept records of the costs to serve nonresidential space heating

consumers on the “wires portion” of the business during his extensive experience with ComEd. (Trans. pg. 2239, ln. 11 - pg. 2240, ll. 1).

Despite the absence of any cost basis for ComEd’s proposed elimination of separate rate treatment for nonresidential space heating consumers, the Proposed Order claims that it is clear that a discount in delivery service charges to nonresidential space heating consumers is unjustified on the basis of cost. (Proposed Order, pg. 217). The Proposed Order’s claim is unsupported by the record in this case because ComEd has not offered any analysis of the cost of providing delivery services to nonresidential space heating consumers versus the cost of providing delivery services to nonresidential non-space heating consumers. (BOMA Ex. 4.0, pg. 1, ll. 18-27, pp. 2-3, ll. 43-66). Without this cost of service evidence, ComEd cannot show and the Commission cannot conclude that separate rate treatment should be discontinued for these consumers.

Perhaps most importantly, BOMA’s proposal does not create a subsidy that other nonresidential consumers would have to fund. (ComEd Ex. 23.0, pg. 32, ll. 691-692). To the contrary, BOMA’s proposal merely makes the overall rate increase for nonresidential space heating consumers comparable to the overall rate increase for nonresidential non-space heating consumers. (BOMA Ex. 3.0, pg. 4, ll. 76-84),

BOMA’s proposal for nonresidential space consumers merely is designed to continue the separate rate treatment for these consumers that was begun nearly three decades ago when Rider 25 was first instituted. (BOMA Ex. 1.0, pg. 11, ll. 243-245). For three decades, countless buildings were constructed with electric space heating facilities in reliance on the separate rate treatment set forth in ComEd’s Rider 25. It would be prohibitively expensive for these buildings to now switch to natural gas heating

facilities, as ComEd witness Mr. Crumrine admitted under cross examination in the following exchange:

Q. Are you aware that most customers cannot practically and economically change their heating system to use another energy source other than electricity?

A. It's my understanding that it would be pretty prohibitively expensive to change to natural gas today, yes.

(Trans. pg. 2250, ll. 11-17).

ComEd witness Dr. John Landon tried to justify ComEd's proposed elimination of separate rate treatment for nonresidential space heating consumers by stating that it is no longer necessary to promote the local use of nuclear and large coal baseload power to support operational efficiency because the competitive market for wholesale power has grown since the mid-70's. (ComEd Ex. 15.0, pg. 11, ll. 223-227). However, BOMA witness Mr. McClanahan pointed out in his rebuttal testimony that operational efficiency of the electric system in ComEd's service territory is of course still improved by promoting the use of electricity at off-peak times, but ComEd may not want to promote such operational efficiency so that its affiliate company Exelon Generation can sell more electricity from its generating plants in high cost electric markets rather than in Illinois. (BOMA Ex. 4.0, pp. 4-5, ll. 98-113).

Clearly, ComEd's justification of its proposal to eliminate separate rate treatment for nonresidential space heating consumers is suspect at best and just as importantly does not take into account the detrimental consequences such action would have on the very consumers that stepped up to help improve ComEd's operational efficiency when this was important to ComEd. The bottom line is that this is the last chance for the Commission to take action to avoid the massive rate shock that otherwise will occur for

nonresidential space heating customers on January 1, 2007. Therefore, for all the reasons stated above, BOMA respectfully requests that the Commission adopt BOMA's proposal to exempt nonresidential space heating consumers from demand charges on electricity used for space heating in the delivery service tariffs adopted by the Commission in this proceeding. Accordingly, BOMA requests that the Commission adopt the following alternative language for the Commission Analysis and Conclusion to Section IX.H. – Rate Design – Elimination of Rider 25 on pages 216-217 of the Proposed Order:

Commission Analysis and Conclusion

ComEd has not provided any cost basis for the elimination of separate rate treatment for nonresidential space heating consumers. The rate mitigation plan adopted in Docket 05-0159 does not adequately address the massive rate shock which nonresidential space heating consumers would experience as a result of the elimination of Rider 25. BOMA's plan would continue the rate treatment of nonresidential space heating consumers that was begun nearly three decades ago when Rider 25 was first instituted.

The Commission is of the opinion and concludes that ComEd should exempt nonresidential space heating consumers from demand charges (i.e., distribution facilities charges) on electricity used for space heating in ComEd's delivery services tariffs.

~~ComEd has proposed to eliminate Rider 25. BOMA proposes that ComEd continue exempting nonresidential space heating consumers from demand charges on electricity used for space heating. BOMA suggests such an outcome is necessary to avoid rate shock. ComEd, however, argues that BOMA's proposal would provide space heat customers with free delivery service for eight months each year.~~

~~BOMA argues that under ComEd's current Rider 25, electricity used by a nonresidential space heating consumer in non-summer months for any other purpose (e.g., lighting, elevators, computers, etc.) would not be exempted from demand charges. It is BOMA's position that operational efficiency of the electric system in ComEd's service territory is improved by promoting the use of nuclear and coal base load plants at off peak times.~~

~~According to ComEd, Rider 25 reflected the difference in ComEd's generation costs between summer and non-summer periods. ComEd states that now, it no longer owns generation and, therefore, a customer's end use characteristics have no material effect on ComEd's cost to provide service. ComEd argues that what BOMA raises is a supply issue and not a distribution cost issue. The Company argues that the end use~~

~~characteristics and load shape of customers do not contribute to ComEd's distribution costs to any significant degree.~~

~~The Commission has reviewed the record and as a preliminary matter observes that this is a very difficult issue. It appears that over a period of many years, the Commission inadvertently allowed rates to be developed that are not reflective of cost causation. That is, it appears through Rider 25 nonresidential space heat customers were granted a discount on both the generation and delivery components of their demand charges. While the discount on generation demand charge was probably justified, the discount on the delivery component was not. Nevertheless, it made little difference until 1997 when restructuring of the Illinois electric markets began.~~

~~It is clear to the Commission that purely on the basis of cost, a discount in the distribution facilities charge to nonresidential space heat customers is not justified. The Commission believes it is appropriate to deviate from cost based rate design only in those instances where there is a significant overriding public policy consideration.~~

~~While the Commission is sympathetic to nonresidential space heat customers, it does not believe there is sufficient reason to deviate from cost based rate design here. ComEd correctly points out that the underlying issue BOMA raised here is related primarily to the cost of procurement or supply, not the cost of delivery.~~

~~BOMA has not suggested that if its proposal was adopted, customers could or would change their consumption behavior, either through conservations or load shifting. The Commission does not believe it would be appropriate to provide nonresidential space heat customers a delivery discount when such a discount would have no positive impact on future actions taken by those customers.~~

~~The Commission next turns to the rate shock and rate mitigation issues raised by BOMA. In Docket 05-0159, BOMA proposed to exempt non residential space customers from demand charges associated with delivery. The Commission correctly found that such a question should not be decided in that proceeding.~~

~~In this proceeding, BOMA's assertions about possible rate impacts rely directly upon its assumptions regarding future procurement costs. That is, BOMA's request for a discount on delivery service charges due to alleged rate shock is premised upon its anticipated increase in both delivery services and supply services. While the Commission understands BOMA's concerns, it does not believe there are sufficient reasons to deviate from cost based rates in this instance.~~

~~The Commission would expect that to the extent nonresidential space heat customers provide benefits to generation suppliers, such customers would be attractive to alternative suppliers. While the Commission is not unsympathetic to BOMA, all things considered the Commission believes there are insufficient public policy considerations that warrant deviating from cost based delivery demand rates (distribution facilities charges) for nonresidential space heat customers.~~

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EXCEPTION 2: The Proposed Order Errs In Not Ordering ComEd To Comply With NARUC Guidelines In Determining Customer-Related And Demand-Related Costs In ComEd's Next Rate Case

The Proposed Order rejects the minimum distribution system approach for allocation of electric distribution costs between customer and demand functions. (Proposed Order, pg. 164). Instead, the Proposed Order supports ComEd's current method of allocating distribution costs between customer and demand functions on the grounds that distribution systems are designed primarily to serve electric demand and attempts to separate the costs of connecting customers to the electric distribution system (i.e., "customer costs") from the costs of serving their demand (i.e., "demand costs") remain "problematic." (Proposed Order, pg. 164).

As BOMA witness Mr. David McClanahan testified, ComEd's embedded cost of service study does not comply with NARUC guidelines with respect to FERC accounts 364-368 because ComEd's cost of service study classifies all costs in these accounts as demand costs and thereby ignores the customer cost portions of these accounts. (BOMA Ex. 4.0, pg. 8, ll. 184-192). Contrary to the Proposed Order, it is not "problematic" to properly allocate demand and customer costs because all ComEd must do to properly allocate these costs is follow the NARUC guidelines on how to make these cost allocations. Therefore, in order to avoid the continued misallocation of costs to ComEd's consumers, BOMA respectfully submits that the Commission order ComEd to follow the NARUC guidelines with respect to FERC accounts 364-368 in the cost of service study that ComEd files in its delivery services rate case. Accordingly, the following alternative language should be inserted into the Commission Analysis and Conclusion to Section

VII. – Cost of Service Issues – Minimum Distribution System on pages 164-165 of the Proposed Order:

Commission Analysis and Conclusion

The Commission is of the opinion and concludes that ComEd must allocate the distribution plant and associated costs in FERC accounts 364-368 between customer-related components and demand-related components in order to develop a cost-based customer charge. Accordingly, the Commission is of the opinion and concludes that ComEd should follow the guidelines contained in NARUC's Electricity Cost Allocation Manual for allocating costs in FERC accounts 364-368 in the cost of service study presented in ComEd's next delivery services rate case.

~~IIEC and BOMA are advocates for use of the minimum distribution system in performing an embedded cost of service study. They argue that such an approach is consistent with cost causation principles and is consistent with the NARUC approach to cost of service studies. Among other things, they contend that the distribution system is designed not only to meet customer demand, but to physically connect each customer's service facilities to the system, regardless of the size of the customer.~~

~~ComEd and Staff oppose use of the MDS because such an approach does not accurately allocate costs to those who cause them to be incurred and they point out that the Commission has repeatedly rejected the MDS approach. They argue, in part, that the MDS approach is flawed because there is only a distant relationship between distribution costs and the number of customers. They also suggest IIEC and BOMA support the MDS approach because it would shift costs from the demand to the customer function and thereby benefit large customers at the expense of smaller customers.~~

~~Based on the record in the instant case, the Commission rejects the minimum distribution or zero intercept approach recommended by IIEC and BOMA for purposes of allocating distribution costs between the customer and demand functions. In the Commission's view, ComEd's method is consistent with the fact that distribution systems are designed primarily to serve electric demand, and the Commission believes that attempts to separate the costs of connecting customers to the electric distribution system from the costs of serving their demand remain problematic. Furthermore, this conclusion is consistent with decisions in Dockets 99-0121 and 00-0802.~~

~~While the Commission is willing to consider the merits of the MDS approach in future rate proceedings, the Commission declines to adopt the suggestion that ComEd be required to present a COSS in its next rate case incorporating the MDS approach. In the Commission's view, it would be unreasonable to require ComEd to perform a COSS that incorporates a method the Company does not endorse and that the Commission has repeatedly rejected.~~

EXCEPTION 3: The Proposed Order's Findings And Ordering Paragraphs Must Be Revised To Be Consistent With The Exceptions Taken By BOMA

To be consistent with BOMA's two exceptions stated above, BOMA respectfully requests that the following language be added to Section XIII. - Findings and Ordering Paragraphs on pages 302-303 of the Proposed Order:

FINDINGS AND ORDERING PARAGRAPHS

- (13) ComEd's embedded cost of service study classifies all distribution and associated costs in FERC accounts 364-368 as solely demand-related and thereby ignores the customer-related portions of these accounts;
- (14) ComEd must follow the NARUC guidelines for allocating costs in FERC accounts 364-368 in ComEd's cost of service study presented in ComEd's next delivery services rate case;
- (15) ComEd's proposed elimination of separate rate treatment for nonresidential space heating consumers will cause massive rate shock for these consumers;
- (16) ComEd has not provided any cost justification for the elimination of separate rate treatment for nonresidential space heating consumers;
- (17) The rate mitigation plan adopted by this Commission in Docket 05-0159 does not adequately address the massive rate shock which nonresidential space heating consumers would experience as a result of the elimination of Rider 25;
- (18) BOMA's nonresidential space heating proposal would merely continue the rate treatment of nonresidential space heating consumers that was begun nearly three decades ago when ComEd's bundled rate Rider 25 was first instituted, but allow ComEd to eliminate Rider 25;
- (19) ComEd should exempt nonresidential space heating consumers from demand charges (i.e., distribution facilities charges) on electricity used for space heating in ComEd's delivery services tariffs.

IT IS FURTHER ORDERED that in the embedded cost of service study that ComEd files in its next delivery services rate case, ComEd should follow the guidelines contained in

NARUC's Electricity Cost Allocation Manual for allocating demand-related and customer-related costs in FERC accounts 364-368.

IT IS FURTHER ORDERED that ComEd exempt nonresidential space heating consumers from demand charges (i.e., distribution facilities charges) on electricity used for space heating in its delivery services tariffs.

Respectfully submitted,

**BUILDING OWNERS AND
MANAGERS ASSOCIATION OF
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